

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Southern Division**

JAMES LYNDON BARNES
118 Oak Avenue
La Plata, Maryland 20646

Plaintiff,

v.

DANIEL HOWARD BARRETT, INC.
12008 Balls Ford Road
Manassas, Virginia 20109

DANIEL H. BARRETT
12008 Balls Ford Road
Manassas, Virginia 20109

Defendants.

Civil Action No.: _____

NOTICE OF REMOVAL

Defendants Daniel Howard Barrett, Inc. and Daniel H. Barrett (collectively, "Defendants,") by their undersigned, Gregg E. Viola, Brad M. Schavio, and Eccleston & Wolf, P.C., respectfully submits this Notice of Removal of the above-captioned matter to the United States District Court for the District of Maryland, pursuant to 28 U.S.C. §§ 1441, *et seq.*, and for cause states as follows:

1. On or about October 9, 2014, Plaintiff James Lyndon Barnes filed a Complaint in the Circuit Court for Charles County, in an action styled *Barnes v. Daniel Howard Barrett, Inc., et al.*, case no. 08-C-14-002625. A copy of the Complaint is attached hereto as *Exhibit A*.

2. Upon information and belief, Defendant was served with process on November 17, 2014. Accordingly, this Notice of Removal is timely filed pursuant to 28 § U.S.C. 1446(b).

GROUND FOR REMOVAL BASED UPON DIVERSITY JURISDICTION

3. This Court's jurisdiction to hear Plaintiff's claim exists where there is a complete diversity of citizenship between the parties and the amount in controversy exceeds the sum or value of \$75,000. 28 U.S.C. §1332(a).

4. Pursuant to 28 U.S.C. §1441(a), this Court has removal jurisdiction based upon diversity of citizenship in cases where it would have had original jurisdiction based upon diversity of citizenship, subject to the following limitations:

a. Removal jurisdiction based upon diversity of citizenship is subject to the limitation that none of the defendants may be a citizen of the state in which the action is brought. 28 U.S.C. §1441(b);

b. Diversity of citizenship must exist at the time that the original action is filed, as well as at the time the Notice of Removal is filed. Kieffer v. Travelers Fire Insurance Co., 167 F.Supp. 398, 401 (D. Md. 1958); and

c. All defendants must consent to removal. Chicago, Rock Island & Pacific Railway Co. v. Martin, 178 U.S. 245 (1900).

FACTS IN SUPPORT OF REMOVAL

5. As set forth in Plaintiff's Complaint, Plaintiff is a resident of Charles County, Maryland. Plaintiff was therefore a citizen of Maryland at the time of the filing of the Complaint, and upon information and belief, remains a citizen of Maryland.

6. Defendant Daniel Howard Barrett, Inc. is a corporation duly organized under the laws of the State of Virginia, with its principal office in the State of Virginia, and regularly conducts business in the State of Maryland. Thus, pursuant to 28 U.S.C. §1332(c)(1), Defendant

was at the time of the filing of the Complaint, and is currently, and a citizen of the State of Virginia.

7. Defendant Daniel H. Barrett was a resident of Manassas, Virginia at the time of the filing of the Complaint, and remains a citizen of Virginia at the time of filing this Notice of Removal.

8. In the Complaint, Plaintiff seeks judgment against Defendants “in the sum in excess of Seventy Five Thousand Dollars (\$75,000.00).” Thus the amount in controversy, exclusive of interest and costs, exceeds the sum or value of \$75,000, which is the amount specified by 28 U.S.C. §1332(a).

9. Accordingly, this Court has original jurisdiction, pursuant to 28 U.S.C. §1332(a), and the action is removable from the circuit court, pursuant to 28 U.S.C. §1441.

PROCEDURAL COMPLIANCE

10. In addition to the Complaint, pursuant to 28 U.S.C. § 1446(a) and Local Rule 103.5(a) of the Rules of the United States District Court for the District of Maryland, a copy of all process, pleadings, documents and orders served on Defendant in the circuit court matter are hereby attached as *Exhibit B-1, Exhibit B-2, Exhibit B-3, Exhibit B-4, Exhibit B-5, Exhibit B-6, Exhibit B-7, and Exhibit B-8.*

11. Pursuant to 28 U.S.C. § 1446(d), Defendant will provide written notice to Plaintiff of the filing of this Notice of Removal, and will file a copy of this Notice of Removal with the circuit court. Defendant is contemporaneously filing with this Court a Certification of Filing of Notice of Removal in the circuit court.

12. Pursuant to Local Rule 103.5(a) of the Rules of the United States District Court for the District of Maryland, within 30 days of the filing of this Notice of Removal, Defendant

will file with this Court copies of all other documents from the circuit court in this matter, and will file with this Court a Certification of Filing of State Court Documents.

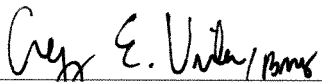
13. Pursuant to Rule 103.5(c) of the Rules of the United States District Court for the District of Maryland, Defendant will file within seven days, with this Court, a Disclosure of Affiliations and Financial Interests.

14. Pursuant to Rule 81(c)(2) of the Federal Rules of Civil Procedure, Defendant will file within seven days, with this Court, its response to Plaintiff's Complaint.

15. Attached as *Exhibit C* is a Civil Cover Sheet.

WHEREFORE, Defendant respectfully requests the instant action be removed from the Circuit Court for Baltimore City and proceed in this Court as properly removed.

Respectfully submitted,



Gregg E. Viola, Federal Bar No. 25737
ECCLESTON & WOLF, P. C.
Baltimore-Washington Law Center
7240 Parkway Drive, 4th Floor
Hanover, Maryland 21076
E-Mail: viola@ewmd.com
Phone: (410) 752-7474
Facsimile: (410) 752-0611
Attorneys for Defendants




Brad M. Schavio, Federal Bar No. 19354
ECCLESTON & WOLF, P. C.
Baltimore-Washington Law Center
7240 Parkway Drive, 4th Floor
Hanover, Maryland 21076
E-Mail: schavio@ewmd.com
Phone: (410) 752-7474
Facsimile: (410) 752-0611
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 5th day of December, 2014, the foregoing Notice of Removal was served by mailing a copy first-class, postage prepaid to:

Frank R. Jones, Esquire
Sasscer, Clagett & Bucher
5407 Water Street, Suite 101
Upper Marlboro, Maryland 20772
Attorney for Plaintiff



Brad M. Schavio